

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 17-107(20) (DWF/TNL)

Plaintiff,

v.

**ORDER AND
MEMORANDUM**

Waralee Wanless,

Defendant.

This matter is before the Court on Defendant's Motion for Leave to File Demonstrative Sentencing Exhibit (Doc. No. 1993), that was in part presented on September 16, 2020, during counsel's sentencing argument. The Government opposes Defendant's motion for leave to file the "Demonstrative Sentencing Exhibit" asserting it was not marked or provided to the Government in advance of the sentencing as other exhibits were. The Government asserts that the PowerPoint was not authenticated in any way and, at the time of the sentencing, it was not offered as a demonstrative exhibit. Government's counsel acknowledges that they did not object to its use as part of defense counsel's sentencing argument, but now oppose it being deemed part of the evidentiary record.

Based upon the presentations of counsel, the entire record before the Court, and the Court being otherwise duly advised in the premises, hereby enters the following:

ORDER

1. Defendant's Motion for Leave to File Demonstrative Sentencing Exhibit (Doc. No. [1993]) is respectfully **DENIED** for the reasons stated in the attached Memorandum.

Dated: October 13, 2020

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

MEMORANDUM

First and most importantly, with or without receipt of Defendant's Demonstrative Sentencing Exhibit, as it has been described, the Court's sentencing decision would have been the same. In other words, the Court has in fact reviewed the entire document, some of which is already part of the record, and it does not and did not affect in any way the Court's sentencing decision with respect to the Defendant, Ms. Wanless. The Court will deem defense counsel's motion as an offer of proof pursuant to Rule 104 of the Federal Rules of Evidence, so it is considered part of the record thus allowing the Appellate Court full access to what constitutes the Demonstrative Sentencing Exhibit even though the Court has respectfully denied Defendant's motion to file the Demonstrative Sentencing Exhibit.

As noted above, with or without careful scrutiny and consideration of Defendant's Demonstrative Sentencing Exhibit, it did not and would not have played any role in the Court's decision with respect to the Defendant's sentence in the case based upon the

sentencing factors pursuant to 18 U.S.C. § 3553(a) and the evidence received during the jury trial.

For these reasons, the Court has respectfully denied Defendant's motion to file the "demonstrative sentencing exhibit."

D.W.F.